IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Crl.MC.No. 3585 of 2006(M)

CC.546/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR
CC.547/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR
(CC 548/2006)
CRIME NO.369 OF 2006 OF THE KALPAKANCHERY POLICE STATION

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PETITIONER: ACCUSED NO.1

UMMERKUTTY, S/O.KUNHIMOIDEENKUTTY,
MUDUVILKALADY HOUSE, RANDATHANI,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE AND DEFACTO COMPLAINANT

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1. THE STATE OF KERALA,
REP. BY THE SUB INSPECTOR OF POLICE,
KALPAKANCHERY POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

2. T.V.SURESH, S/O.T.R.VELAYUDHAN,
THAYYIL HOUSE, RANDATHANI,
TIRUR, MALAPPURAM DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
R2 BY ADV.SRI.A.KRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3585 OF 2006

Dated this the 14th day of December, 2006.

ORDER

The petitioner is the complainant in three prosecutions under Section 138 of the N.I Act. It is his grievance that after the launching of the said prosecution, a false private complaint has been filed by the respondent herein against the common complainant in the three prosecutions under Section 138 of the N.I Act, alleging commission of offences punishable, inter alia, under Sections 379 & 468 I.P.C. The crux of the allegations raised against the petitioner is that he had committed theft of the cheque leaves, forged those cheque leaves and used them as genuine. Investigation was in progress. The petitioner came to this Court with this prayer to quash the F.I.R registered against him. The interim stay was granted as per order dt.8.11.06 and the matter has now come up for hearing.

2. At the stage of hearing, the learned counsel for the petitioner submits that proceedings are initiated with vexatious intent. He fairly concedes that the provisions of Section 195 Cr.P.C cannot now apply in the light of the decision of the Supreme Court in **Iqbal Singh Marwah v. Meenakshi**

Marwah [A.I.R 2005 Supreme Court 2119]. The learned counsel for the petitioner only prays that invoking the powers under Section 482 Cr.P.C considering the exceptional nature of the facts and circumstances of this case appropriate directions may be issued in the interests of justice to save the petitioner from the trauma of unnecessary and undeserved arrest and detention.

3. Having considered all the relevant inputs, I am satisfied that the prayer for quashing the F.I.R deserves to be dismissed, but at the same time appropriate directions can be issued under Section 438 Cr.P.C to ensure that the petitioner is not unnecessarily vexed and harassed.

4. In the result, this Crl.M.C is, allowed in part. The prayer to quash the F.I.R is rejected. But the following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m on 21.12.2006. He shall be released on bail on his executing a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m

and 4 p.m on 22.12.2006 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i) above, the police shall be at liberty thereafter to arrest him and deal with him in accordance with law.

R.BASANT
JUDGE

rtr/